

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20590

DEPT OF TRANSPORTATION
LETTERS

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In the Matter of

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.
and
JOSEPH L. GALLOWAY

Complainants

v.

Docket OST-99-6410 ~ 8

UNITED AIRLINES, INC., AMERICAN AIRLINES, INC.,
DELTA AIRLINES, INC., NORTHWEST AIRLINES, INC.,
CONTINENTAL AIRLINES, INC., US AIRWAYS, INC.,
TRANS WORLD AIRLINES, INC., AMERICA WEST
AIRLINES, INC., ALASKA AIRLINES, INC., AMERICAN
TRANS AIR, HORIZON AIR INDUSTRIES, INC.,
MIDWEST EXPRESS, INC., AIR CANADA, KLM ROYAL
DUTCH AIRLINES, TACA INTERNATIONAL
AIRLINES, INC. and AIR FRANCE

Respondents

ANSWER OF
ALASKA AIRLINES, INC.
AND

HORIZON AIR INDUSTRIES, INC., D/B/A HORIZON AIR

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Dated: December 10, 1999

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**ANSWER OF
ALASKA AIRLINES, INC.**

AND

HORIZON AIR INDUSTRIES, INC., D/B/A HORIZON AIR

Alaska Airlines, Inc. and its commonly-owned affiliate, Horizon Air Industries, Inc. (collectively, "Alaska"), deny the claim of the American Society of Travel Agents, Inc. and Joseph L. Galloway (collectively, "ASTA") that Alaska has engaged in an unfair practice or unfair method of competition in violation of 49 U.S.C. § 41712.

Alaska has not been a party to any "campaign to eliminate or . . . severely impair the public's access to travel agents," as alleged by ASTA, ASTA Complaint at 10, and it has no interest in preventing or hindering the dissemination of information about its fares and services, or those of other carriers. To the contrary, Alaska has traditionally relied heavily on the services

offered by travel agents, and will continue to do so in the future.

More than any act of the airlines, the increasing influence of the Internet may be a cause of any marginalization that travel agencies are experiencing. Online travel sites with sophisticated search engines allow consumers themselves efficiently to navigate the array of competing schedules and fares, the very thing Complainants assert travel agencies alone are able to do. Alaska has striven to keep pace with its competitors by embracing Internet distribution for the efficiency and low cost it offers.

Alaska understands the competitive pressures that travel agents now face as a result of the Internet and other alternative means of distribution, and has no desire to add to those pressures. The actions Alaska has taken with respect to travel agents simply respond to similar competitive pressures that Alaska itself is facing in the air transportation market. Alaska's actions have been unilaterally taken; they are fully justified; and they are entirely lawful.

I. THE COMMISSION RATE REDUCTION

Alaska, like certain other carriers, lowered its base domestic commission level to 5% in October 1999. Alaska's decision to do so was entirely unilateral. It did not agree to reduce commissions with any other carrier, nor does ASTA's Complaint even specifically allege that it did.

One paramount reason motivated Alaska's decision: the need to remain competitive in the air transportation business. Virtually all of Alaska's route structure is concentrated along the West Coast, which has become one of the most competitive air transportation markets in the United States. Until a few years ago, Alaska was a relatively high cost carrier. The entry of carriers such as Southwest and Shuttle by United, however, has ensured that very low fares are now the norm in West Coast markets. In order to remain a significant competitive force on the West Coast, Alaska transformed itself into a relatively low cost carrier, while still maintaining its

stellar reputation for passenger service. Alaska has attempted, and is still attempting, to cut costs in every way possible consistent with safety and service.

Southwest's distribution costs on a per passenger basis are considerably less than Alaska's because (1) it is a participating (paying) carrier in only one CRS, compared to Alaska's four, and it receives a "promotional allowance" – an effective discount – in that one; and (2) it relies far less than Alaska on distribution through travel agents, and thus pays proportionally fewer commissions. Similarly, the Shuttle by United enjoys a de facto cost advantage by virtue of its parentage. With its global operations and alliance structure, United can easily afford to subsidize its West Coast Shuttle flights if it so chooses. United's ownership interest in Galileo also ensures that, unlike Alaska, it can recoup at least a portion of the fees it pays to CRSs.

United publicly announced that it was reducing its commissions to 5% on October 7, 1999. Alaska therefore became aware that one of its two principal competitors – and the only one to rely heavily on travel agent distribution – would further reduce its distribution costs, permitting further fare reductions as well. Alaska was effectively compelled to reduce its distribution costs likewise in order to remain competitive with United and with Southwest. The dictates of competition – not collusion or any desire to harm travel agents – motivated Alaska's decision to cut its commission levels.

Alaska submits that this unilateral action, taken for legitimate business reasons without anticompetitive intent, fails even to approach the level of an "unfair practice" or "unfair method of competition" under 49 U.S.C. § 41712. It does not remotely constitute a violation of the antitrust laws, nor is it an anticompetitive practice that, if unchecked, could blossom into an antitrust violation. See United Air Lines, Inc. v. Civil Aeronautics Board, 766 F.2d 1107, 1114 (7th Cir. 1985). Indeed, it is not an anticompetitive practice at all. It is a reasonable response to competitive pressures that enhances efficiency, maintains meaningful competition in West Coast

markets, and benefits consumers by enabling Alaska to reduce existing fares or forego or minimize future fare increases. We are aware of no court or administrative agency that has imposed liability on a party for such innocent, procompetitive conduct.

II. THE “COST SQUEEZE” PRACTICES

ASTA’s Complaint also decries various practices that allegedly inflate travel agents’ costs and thereby compound the effect of the commission reductions. Curiously, though, the Complaint never specifically labels these practices as “unfair” for purposes of 49 U.S.C. § 41712, nor does ASTA’s Prayer for Relief ask the Secretary to find that the specified practices violate 49 U.S.C. § 41712. ASTA’s “restraint” in this regard is well-justified; even ASTA presumably realizes that the ten practices of which it complains do not, individually or collectively, amount to an unfair practice or method of competition under the statute.

Alaska is not even mentioned in connection with these practices. (Indeed, it is not mentioned anywhere in the Complaint apart from the list of defendants in the caption and first paragraph). Several of the practices, moreover, concern only CRS owners, which Alaska is not. Other practices concern the Airlines Reporting Corporation and IATA, neither of which Alaska controls or could possibly control. One “practice” concerns SATO, which, as ASTA itself notes, was sold to private interests a year ago.

The few remaining practices, like the others, are both reasonable and justified for legitimate business reasons. With respect to CRS displays of code share flights, for example, Alaska simply wishes to preserve the regulations which, it believes, have worked well for passengers and carriers alike. See ASTA Complaint at 13- 14. In any event, that entire debate involves (non-sham) governmental petitioning activity which is constitutionally protected under the Noerr-Pennington doctrine. Alaska’s actions with respect to passive segments constitute a

reasonable effort to pare distribution costs by minimizing the abusive and unnecessarily cost-inflating practices of some travel agents. See ASTA Complaint at 14. Alaska's ticketing policies are neither "discriminatory" nor inequitable; they reflect the right of any company to unilaterally sell its products and services as it sees fit. See ASTA Complaint at 15-17.

III. SPECIFIC ADMISSIONS AND DENIALS

Alaska responds as follows to each paragraph of ASTA's Complaint:

Paragraph 1. Admitted that Complainants complain as described.

Complainants

Paragraph 2. Admitted that ASTA is one of the largest professional travel trade organizations in the world. Alaska lacks information sufficient to admit or deny the remainder of ¶ 2.

Paragraph 3. Admitted that ASTA has provided testimony and appeared in legal proceedings, and that it is widely recognized as representing the interests of its members and the travel agency industry. Alaska lacks information sufficient to admit or deny the remainder of ¶ 3.

Paragraph 4. Alaska lacks information sufficient to admit or deny ¶ 4.

Respondents

Paragraph 5. Admitted as to Alaska, and, upon information and belief, as to the other Respondents.

Statutory Framework

Paragraph 6. Alaska neither admits nor denies ¶ 6, which is legal argument.

Paragraph 7. Alaska neither admits nor denies ¶ 7, which is legal argument.

Paragraph 8. Alaska neither admits nor denies ¶ 8, which is legal argument.

Paragraph 9. Alaska neither admits nor denies ¶ 9, which is legal argument.

Paragraph 10. Alaska neither admits nor denies ¶ 10, which is legal argument.

Paragraph 11. Alaska neither admits nor denies ¶ 11, which is legal argument.

Paragraph 12. Alaska neither admits nor denies ¶ 12, which is legal argument.

Paragraph 13. Alaska neither admits nor denies ¶ 13, which is legal argument.

Paragraph 14. Alaska neither admits nor denies ¶ 14, which is legal argument.

Paragraph 15. Alaska neither admits nor denies ¶ 15, which is legal argument.

Paragraph 16. Alaska neither admits nor denies ¶ 16, which is legal argument.

Economic Background: Travel Agents and Competition

Paragraph 17. Admitted that travel agents serve useful functions, but denied that their functions are “crucial” or “essential” in all instances.

Paragraph 18. Admitted that travel agents can, but do not always, provide the described services. Remainder of ¶18 denied.

Paragraph 19. Admitted that travel agents can, but do not always, provide the described services. Remainder of ¶19 denied.

Paragraph 20. Admitted that travel agents can, but do not always, provide the described services. Remainder of ¶20 denied.

Paragraph 21. First sentence admitted. Second sentence denied. Alaska lacks information sufficient to admit or deny the third sentence of ¶21.

Paragraph 22. Admitted that many travel agencies are independently-owned small businesses. Denied that travel agencies compete directly with airlines since airlines, as principals, can authorize, limit or prohibit agents from selling their inventory. Remainder of ¶22 denied.

Paragraph 23. Admitted that some consumers may prefer dealing with travel agencies and that consumers' transaction costs may sometimes be lower through travel agencies. Remainder of ¶ 23 denied.

Paragraph 24. Admitted that base commission levels rose after deregulation. Remainder of ¶ 24 denied.

Paragraph 25. Admitted that deregulation has produced some benefits for the airlines and the public. Remainder of ¶ 25 denied.

Paragraph 26. Admitted that the percentage of airline tickets sold through travel agencies increased after deregulation. Remainder of ¶ 26 denied.

Paragraph 27. Admitted that the early 1990's were not relatively prosperous years for Alaska. Alaska lacks information sufficient to admit or deny the remainder of ¶ 27.

Paragraph 28. Admitted that the Internet provides an alternative to distribution through travel agencies. Remainder of ¶ 28 denied.

Non-Compensatory Commission Policies

Paragraph 29. Denied.

Paragraph 30. Admitted that some airlines capped and/or reduced commissions as described. Alaska lacks information sufficient to admit or deny the remainder of ¶ 30.

Paragraph 31. Admitted upon information and belief.

The Cost Squeeze

Paragraph 32. Denied.

Paragraph 33. Admitted.

Paragraph 34. First two sentences admitted. Alaska lacks information sufficient to admit or deny the third sentence of ¶ 34.

Paragraph 35. Admitted except as to the characterization of the CAS qualifier requirements as unnecessary, unduly costly, or unduly burdensome, which is denied.

Paragraph 36. Admitted except as to the alleged lack of “protection,” which is denied.

Paragraph 37. Admitted except as to the characterization of the security requirements as “unnecessary,” which is denied.

Paragraph 38. Admitted as to the operation and cost of ERSP. Denied as to the purpose of ERSP.

Paragraph 39. Admitted that several airlines opposed the requested changes to the code-share regulations and that DOT has indicated it will consider this issue in another rule-making. Remainder of ¶ 39 denied.

Paragraph 40. Admitted that some airlines and GDSs have taken the actions described in order to check the abusive and unnecessarily cost-inflating practices of some travel agents. Remainder of ¶ 40 denied.

Paragraph 41. As a non-GDS owner, Alaska lacks information sufficient to admit or deny ¶ 41.

Paragraph 42. Alaska lacks information sufficient to admit or deny ¶ 42.

Paragraph 43. Alaska lacks information sufficient to admit or deny ¶ 43.

Paragraph 44. Admitted that IATA decision rules require unanimity. Alaska lacks information sufficient to admit or deny the remainder of ¶ 44.

Paragraph 45. Alaska lacks information sufficient to admit or deny ¶ 45.

Paragraph 46. Admitted that some airlines provide fares that are available only on their Internet sites; that such fares may be accompanied by certain inducements benefiting purchasers; and that some airlines impose commission caps on agent sales of Internet-originated transactions. Remainder of ¶ 46 denied.

Paragraph 47. Alaska lacks information sufficient to admit or deny ¶ 47.

Paragraph 48. Admitted that frequent flyer awards are typically redeemed through airlines directly, for accounting reasons, among others. Remainder of ¶ 48 denied.

Paragraph 49. Admitted from “Delta Air Lines” through the end. Remainder of ¶ 49 denied.

Paragraph 50. Alaska lacks information sufficient to admit or deny the first sentence. Remainder of ¶ 50 denied.

Paragraph 51. Admitted upon information and belief that Delta cited increased CRS booking fees as one justification for the announced surcharge and that the surcharge was ultimately retracted. Remainder of ¶ 51 denied.

Paragraph 52. Admitted that SATO, Inc. was owned by airlines until 1998 and that it operated like a travel agency. Alaska lacks information sufficient to admit or deny the remainder of ¶ 52.

Paragraph 53. Alaska lacks information sufficient to admit or deny ¶ 53.

Paragraph 54. Admitted that Alaska and other airlines can and do obtain, for a fee, certain marketing, booking, and sales data from CRSs, as expressly authorized by DOT. Remainder of ¶ 54 denied.

Paragraph 55. Admitted that ARC sells travel agency total sales figures to airlines. Remainder of ¶ 55 denied.

Discussion

Paragraph 56. Admitted.

Paragraph 57. Admitted that travel agencies, like most companies, may charge their customers for the services they provide. Remainder of ¶ 57 denied upon information and belief.

Paragraph 58. Denied.

Paragraph 59. Denied.

Paragraph 60. Denied.

Paragraph 61. Denied.

Paragraph 62. Denied.

Paragraph 63. Admitted that some airlines have imposed commission caps on on-line travel agencies and independent ticketing services. Alaska lacks information to admit or deny those firms' costs. Remainder of ¶ 63 denied.

Paragraph 64. Denied.

Paragraph 65. Admitted that a competitive market for travel services may help facilitate new entry by new carriers and expansion by smaller carriers, and that Congress, DOJ, and DOT have expressed some concern about market conditions that impede entry by, and expansion of, small, low-price carriers. Remainder of ¶ 65 denied.

Paragraph 66. Admitted that fares are sometimes higher at hubs, and that dominant hub carriers, which Alaska is not, have at times cut commissions. Remainder of ¶ 66 denied.

Paragraph 67. Denied.

Paragraph 68. Denied

Conclusion

Paragraph 69. Denied

Paragraph 70. Denied.

Paragraph 71. Denied.

Paragraph 72. Denied.

Paragraph 73. Alaska neither admits nor denies the first sentence of ¶ 73, which is legal argument. Second sentence denied.

Paragraph 74. Admitted that ASTA seeks the relief described. Denied that ASTA is entitled to any relief. ASTA's prayer for relief is in effect a request that DOT mandate a minimum commission level that airlines pay travel agents. This is precisely the kind of market control that the Department successfully abandoned over two decades ago.

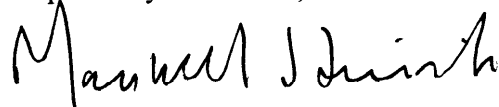
IV. CONCLUSION

Alaska depends upon the services of travel agents at least as much as, and probably more than, most carriers. It has no desire to eliminate or marginalize an industry which has helped it to maintain competitive viability. But Alaska, like travel agents, competes in a fiercely-competitive environment; as a matter of survival it must continually attempt to cut its costs to match those of its competitors. Its recent reduction of base domestic commission levels was a justified, unilateral attempt to do just that. Neither that reduction nor any of the other practices of which ASTA complains constitute an "unfair practice" or an "unfair method of competition" within the meaning of 49 U.S.C. § 41712.

For the reasons stated herein, Alaska respectfully asks the Secretary to dismiss the Complaint of the American Society of Travel Agents, Inc. and Joseph L. Galloway.

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Respectfully submitted,



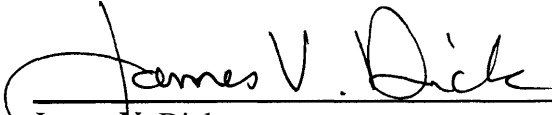
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Dated: December 10, 1999

CERTIFICATE OF SERVICE

I certify that I have this 10th day of December, 1999, served a copy of the above Answer of Alaska Airlines, Inc. and Horizon Air Industries, Inc., d/b/a Horizon Air, by first-class U.S. mail, postage prepaid, upon counsel for the Complainants and Respondents identified in the caption of the Answer and shown on the attached list.



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